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10/804,213

03/19/2004

Kazuo Shiota

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EXAMINER

KHAN, USMAN A

ART UNIT

PAPER NUMBER

2622

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/804,213

Applicant(s)

SHIOTA, KAZUO

Examiner

Usman Khan

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/19/2004</u> .                                              | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 03/19/2004 has been considered by the examiner. The submission is in compliance with the provisions of 37 CFR 1.97.

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim(s) 12** is/are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 12 defines a program embodying functional descriptive material. However, the claim does not define a

computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed program can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 3, 5 - 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants admitted prior art in further view of Anderson et al. (US patent No. 5,917,488).

Regarding **claim 1**, Applicants admitted prior art discloses an image recording apparatus (page 1 lines 12 – 24) comprising: image acquisition means for obtaining image data sets (page 1 lines 12 – 15).

However, Applicants admitted prior art fails to disclose a classification selection means for carrying out classification **and/or** selection on the image data sets; and media recording means for recording the image data sets that have been subjected to

the classification **and/or** the selection in a portable recording medium. Anderson et al., on the other hand discloses a classification selection means for carrying out classification **and/or** selection on the image data sets; and media recording means for recording the image data sets that have been subjected to the classification **and/or** the selection in a portable recording medium (column 3 lines 57 – column 4 line 9; If the user selects after the programmed groups are created a new data set is created within the programmed group).

More specifically, Anderson et al. discloses a classification selection means for carrying out classification (column 3 lines 15 *et seq.* and column 3 lines 57 *et seq.*; natural grouping/ programmed grouping) **and/or** selection on the image data sets (column 3 lines 6 – 14 and column 3 lines 57 *et seq.*; image data sets; and column 3 lines 57 *et seq.* selection of data sets from the groups by the user); and media recording means for recording the image data sets that have been subjected to the classification (Abstract; The memory includes a view management unit that generates a graphical window showing thumbnail representations of programmed groups; i.e. recorded in the memory are image data sets that have been subjected to the grouping which are viewable) **and/or** the selection in a portable recording medium.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem. In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Regarding **claim 2**, as mentioned above in the discussion of claim 1, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim. Additionally, Anderson et al. teaches that the classification selection means carries out the classification on the image data sets according to **either** date of photography thereof **or** similarity between images represented by the image data sets (column 3, lines 15 – 20; a natural group, comprising a set of images associated by a temporal, spatial, or some physical relationship; or a programmed group, comprising a set of image data sets associated by a user-defined criterion).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the

teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem. In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Regarding **claim 3**, as mentioned above in the discussion of claim 1, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim. Additionally, Anderson et al. teaches that the classification selection means carries out the classification on the image data sets according to scene characteristic thereof by analyzing the scene characteristic including **at least one of**: colors of images represented by the image data sets, density distribution therein, and a

shape of a subject therein (column 3, lines 15 – 20; a natural group, comprising a set of images associated by a temporal, spatial, or some physical relationship; or a programmed group, comprising a set of image data sets associated by a user-defined criterion).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem. In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).



Regarding **claim 5**, as mentioned above in the discussion of claim 1, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim. Additionally, Anderson et al. teaches that the classification selection means carries out the classification first in the case where the classification and the selection are carried out (column 3 lines 57 – column 4 line 9; the user selects after the natural groups are created).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data

sets and would have commended themselves to an artisan addressing such a problem.

In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Regarding **claim 6**, as mentioned above in the discussion of claim 1, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim. Additionally, Anderson et al. teaches that the classification selection means carries out the selection first in the case where the classification and the selection are carried out (column 3 lines 57 – column 4 line 9; If the user selects after the programmed groups are created a new data set is created within the programmed group).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem. In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Regarding **claim 7**, as mentioned above in the discussion of claim 1, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim. Additionally, Anderson et al. teaches reception means for receiving an instruction to carry out further classification (column 3 lines 57 – column 4 line 9; If the user selects after the programmed groups are created a new data set is created within the programmed group) **and/or** further selection on the image data sets that have been subjected to the classification (column 3 lines 57 – column 4 line 9; If the user selects after the programmed groups are created a new data set is created within the programmed group) **and/or** the selection and for carrying out the further classification (column 3 lines 57 – column 4 line 9; If the user selects after the programmed groups are created a new data set is created within the programmed group) **and/or** the further selection, wherein the media recording means records in the recording medium the image data sets that have been subjected to the further classification and/or the further selection by the reception means (column 3 lines 57 – column 4 line 9; If the user selects after the programmed groups are created a new data set is created within the

programmed group; also Abstract; The memory includes a view management unit that generates a graphical window showing thumbnail representations of programmed groups; i.e. recorded in the memory are image data sets that have been subjected to the grouping which are viewable).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem. In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Regarding **claim 8**, as mentioned above in the discussion of claim 1, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim. Additionally, Anderson et al. teaches that the media recording means records the image data sets that have been subjected to the classification (Abstract; The memory includes a view management unit that generates a graphical window showing thumbnail representations of programmed groups; i.e. recorded in the memory are image data sets that have been subjected to the grouping which are viewable) **and/or** the selection in the recording medium in a format that enables display of a slide show (figure 6 items 614(1) – 614(m)).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer

are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem.

In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Regarding **claim 9**, as mentioned above in the discussion of claim 8, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim. Additionally, Applicants admitted prior art teaches that the media recording means records the image data sets in **either** a video CD format or a DVD video format in the recording medium (page 1 lines 12 – 15).

Regarding **claim 10**, as mentioned above in the discussion of claim 1, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim. Additionally, Anderson et al. teaches that the media recording means records in the recording medium the image data sets having been subjected to the classification (Abstract; The memory includes a view management unit that generates a graphical window showing thumbnail representations of programmed groups; i.e. recorded in the memory are image data sets that have been subjected to the grouping which are viewable) **and/or** the selection in a manner that enables printing thereof classification.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the

teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem. In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Regarding **claim 11**, Applicants admitted prior art discloses an image recording method (page 1 lines 12 – 24) comprising the steps of: obtaining image data sets (page 1 lines 12 – 15)

However, Applicants admitted prior art fails to disclose carrying out steps of: carrying out classification **and/or** selection on the image data sets; and recording the image data sets that have been subjected to the classification **and/or** the selection in a

portable recording medium. Anderson et al., on the other hand discloses carrying out steps of: carrying out classification **and/or** selection on the image data sets; and recording the image data sets that have been subjected to the classification **and/or** the selection in a portable recording medium.

More specifically, Anderson et al. discloses carrying out steps of: carrying out classification (column 3 lines 15 *et seq.* and column 3 lines 57 *et seq.*; natural grouping/programmed grouping) **and/or** selection on the image data sets (column 3 lines 6 – 14 and column 3 lines 57 *et seq.*; image data sets; and column 3 lines 57 *et seq.* selection of data sets from the groups by the user); and recording the image data sets that have been subjected to the classification (Abstract; The memory includes a view management unit that generates a graphical window showing thumbnail representations of programmed groups; i.e. recorded in the memory are image data sets that have been subjected to the grouping which are viewable) **and/or** the selection in a portable recording medium (column 3 lines 57 – column 4 line 9; If the user selects after the programmed groups are created a new data set is created within the programmed group).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.



While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem. In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Regarding **claim 12**, Applicants admitted prior art discloses program causing a computer to execute an image recording method (page 1 lines 12 – 24) comprising the steps of: obtaining image data sets (page 1 lines 12 – 15)

However, Applicants admitted prior art fails to disclose carrying out steps of: carrying out classification **and/or** selection on the image data sets; and recording the image data sets that have been subjected to the classification **and/or** the selection in a portable recording medium. Anderson et al., on the other hand discloses carrying out steps of: carrying out classification **and/or** selection on the image data sets; and

recording the image data sets that have been subjected to the classification **and/or** the selection in a portable recording medium.

More specifically, Anderson et al. discloses carrying out steps of: carrying out classification (column 3 lines 15 *et seq.* and column 3 lines 57 *et seq.*; natural grouping/ programmed grouping) **and/or** selection on the image data sets (column 3 lines 6 – 14 and column 3 lines 57 *et seq.*; image data sets; and column 3 lines 57 *et seq.* selection of data sets from the groups by the user); and recording the image data sets that have been subjected to the classification (Abstract; The memory includes a view management unit that generates a graphical window showing thumbnail representations of programmed groups; i.e. recorded in the memory are image data sets that have been subjected to the grouping which are viewable) **and/or** the selection in a portable recording medium (column 3 lines 57 – column 4 line 9; If the user selects after the programmed groups are created a new data set is created within the programmed group).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Anderson et al. with the teachings of Admitted applicant prior art because in column 4 lines 56 – 65 Anderson et al. teaches a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets.

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a computer may be realized by an imaging apparatus, it is well known to a skilled artisan that an imaging apparatus and a computer are in the

same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if an imaging apparatus and a computer are not in the same field of endeavor, which the examiner does not concede, an imaging apparatus and a computer are reasonably pertinent to solving the problem of a user friendly method for displaying and manipulating image data sets thereby organizing thumbnails and organizing data sets and would have commended themselves to an artisan addressing such a problem. In re Clay, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants admitted prior art in further view of Anderson et al. (US patent No. 5,917,488) in further view of Okumura (US patent No. 5,878,156) and in further view of Examiners Official Notice.

Regarding **claim 4**, as mentioned above in the discussion of claim 1, Applicants admitted prior art in further view of Anderson et al. teaches all of the limitations of the parent claim.

However, Applicants admitted prior art in further view of Anderson et al. fails to disclose the classification selection means carries out the selection on the image data sets for selecting images representing a person or persons whose eyes are not closed. Okumura, on the other hand discloses selection on the image representing a person or persons whose eyes are not closed.

More specifically, Okumura discloses selection on the image representing a person or persons whose eyes are not closed (column 8 lines 12 – 31, detector 8 detects is eyes are opened or closed; When used with the natural group physical relationship of Anderson et al. a classification selection means carries out the selection on the image data sets for selecting images representing a person or persons whose eyes are not closed is produced).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Okumura with the teachings of Applicants admitted prior art in further view of Anderson et al. because in column 3 lines 10 - 12 Okumura teaches that the invention provides a face image processing apparatus which can detect the open or closed state of an eye at higher precision in turn higher quality i.e. open eye images can be separated from bad pictures i.e. pictures where the objects eyes are closed.

However, Applicants admitted prior art in further view of Anderson et al. in further view of Okumura fails to teach that the classification selection means carries out the selection on the image data sets for selecting images representing no blur.

The examiner takes Official Notice that it is old and well known in the art to have a classification selection means carries out the selection on the image data sets for selecting images representing no blur.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a detector to detect the un-blurry images to separate higher quality images from the bad quality images.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rothberg et al. (US patent No. 5,422,690) teaches closed eye detection.

Tabata et al. (US patent No. 6,313,864) teaches closed eye detection.

Ito (US patent No. 6,882,369) teaches closed eye detection.

Pirim et al. (US patent No. 6,717,518) teaches closed eye detection.

Takayanagi et al. (US patent No. 5,748,859) teaches classifying and selecting of images.

Takayanagi et al. (US patent No. 5,740,335) teaches classifying and selecting of images.

Takayanagi et al. (US patent No. 5,619,623) teaches classifying and selecting of images.

Takayanagi et al. (US patent No. 6,181,833) teaches classifying and selecting of images.

Ogawa (US PgPub 2002/0089643) teaches closed eye detection.

Kondo et al. (US PgPub 2004/0052415) teaches non-blurry image detection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Usman Khan whose telephone number is (571) 270-

Art Unit: 2622

1131. The examiner can normally be reached on Mon-Thru 6:45-4:15; Fri 6:45-3:15 or Alt. Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Usman Khan  
04/27/2007  
Patent Examiner  
Art Unit 2622

A handwritten signature in black ink, appearing to read 'David Ometz', with a long horizontal line extending to the right.

DAVID OMETZ  
SUPERVISORY PATENT EXAMINER